

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF OHIO  
3 EASTERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

Case No. 5:18CR5

Akron, Ohio

6 vs.

Wednesday, September 26, 2018

7 ERIC W. BEARD,

8 Defendant.

9 EXCERPT OF TRANSCRIPT OF SENTENCING HEARING  
10 BEFORE THE HONORABLE JOHN R. ADAMS  
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Government: Carol M. Skutnik  
14 Office of the U.S. Attorney - Cleveland  
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19 For the Defendant: David C. Jack  
20 Attorney at Law  
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24 Court Reporter: Caroline Mahnke, RMR, CRR, CRC  
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Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription.

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THE COURT: Thank you, counsel.

For the record, I would note I have carefully reviewed the matter. I have gone over all the various documents as I previously indicated, reviewed them all. I've spoken with the probation officer. She and I both have gone over the matter, and obviously the case is deeply troubling, as all of these cases are.

On December 18 -- when I turn to the various factors I'm required to consider, the nature and circumstances of the offense is where we're required to begin. We begin that on December 18, 2017, a complaint was lodged that defendant, Eric Beard, had taken inappropriate pictures or had inappropriate pictures of his step-daughter.

Mr. Beard admitted he had taken the inappropriate photographs of his three-year-old step-daughter, Jaylyn. Photographs are of the victim's bottom half.

Mr. Beard explained that he engaged in a sexual conversation with a female identified as Abi Smith. Abi would send him nude photographs of herself. Mr. Beard, in exchange, would send photographs of himself and/or the victim.

Mr. Beard reported taking three photographs of the victim's nude bottom half the morning of December 18, 2017. He then sent those images to Abi Smith, had conversations

1 with her.

2 During one conversation sent by Mr. Beard, he states,  
3 "Lick her pussy, her ass and pussy," to which Beard  
4 explained he was referring to the minor victim.

5 Beard denied touching J.R. and stated that he sent the  
6 message trying to arouse Abi Smith so that she would send him  
7 a photograph.

8 Abi replied asking Mr. Beard if he had done this in  
9 the past, and he had stated yes.

10 Mr. Beard stated the images of the minor victim were  
11 not for his own sexual gratification but they were used as a  
12 bargaining tool to receive nude photographs from Abi that he  
13 would then use in his own sexual activities.

14 On December 19, 2017, the victim, the minor victim,  
15 was interviewed by an individual from the Wayne County Child  
16 Advocacy Center. During the interview, the minor victim  
17 referred to Mr. Beard as daddy.

18 The minor victim also underwent a physical examination  
19 during which she disclosed that her daddy had licked her on  
20 private areas. The victim also stated that her daddy put  
21 his finger in her butt in the front and the back.

22 I'm sorry for being graphic, but those are the facts  
23 and they are what the Court must consider in deciding a  
24 sentence. And it's graphic. It's unfortunate. But those  
25 are the facts.

1           On December 21, 2018, a search of Mr. Beard's LG cell  
2 phone revealed approximately 22 images depicting child  
3 pornography involving the minor child referenced above. And  
4 the greater details, or more complete details, of the  
5 offense are outlined in paragraphs 4 through 12 of the  
6 presentence report.

7           The history of the defendant and the characteristics  
8 of the defendant, his prior record, violence, physical  
9 abuse, diminished capacity, employment, age, substance abuse  
10 and family ties.

11           The defendant is 26 years old with one juvenile  
12 adjudication for attempt -- arson and attempt safe cracking  
13 and breaking and entering.

14           He also has two adult convictions which are certainly  
15 much lesser important driving under suspension convictions.

16           There is no history of violence in the defendant's  
17 past. He does report suffering from emotional abuse and  
18 describes some sexual abuse.

19           He started counseling as a result of the instant  
20 offense, although he has some history of counseling based on  
21 the information and records that I've seen.

22           He does report being depressed, suffering from mood  
23 swings, and that's more likely than not based on,  
24 unfortunately, his current situation.

25           Mr. Beard is in fair physical health although he

1 suffered a slight heart attack and is in need of dentures.

2 He obtained his GED in 2010, has some other  
3 certifications.

4 In 2017 he was employed for three months as a painter  
5 for Stahl in Wooster, Ohio.

6 He does have a work history primarily as a machinist  
7 according to the PSI. I've gone through it. He has had  
8 some employment. It appears that he has had numerous jobs.  
9 I'm not sure why he's not been able to maintain those jobs.  
10 But he has worked, to his credit.

11 He has never been married, has no biological children.  
12 It appears that he was a father figure for this child, for  
13 Jaylyn, for the past several years during the time that he  
14 lived with the child's mother.

15 In terms of sentencing disparities, there may be some  
16 in this case based upon the recommended sentence and the  
17 circumstances here.

18 In terms of the need for the sentence imposed, the  
19 statute speaks to just punishment, adequate deterrence,  
20 protect the public, reflect the seriousness of the offense,  
21 improve the offender's conduct and condition.

22 The Court would note that I have considered the  
23 arguments of counsel. He has done a fine job of arguing and  
24 advocating on behalf of his client, and that's difficult to  
25 do in these difficult cases, to say the least.

1 I'll acknowledge his constitutional argument. It's  
2 not well-taken, I don't believe, unfortunately. I know he  
3 is preserving it for the record and for purposes of appeal.

4 The guidelines have been upheld and there  
5 is -- obviously Congress took the matter to heart, the  
6 issues related in the guidelines and disagreements among  
7 jurists about whether the guidelines are too harsh as it  
8 relates to these offenders.

9 And to that end, Congress received a report from the  
10 United States Sentencing Commission back in 2012 which  
11 covers these areas. I know there is some debate among  
12 jurists about the guidelines and/or about the type of  
13 sentences that are imposed for these kinds of cases.

14 But this case, unfortunately, is distinct from many in  
15 that we have a defendant, sadly, who does have a limited  
16 criminal history. But unfortunately, these cases, when they  
17 involve hands-on taking photographs of little children,  
18 placing them on the internet, certainly is deeply troubling.  
19 And that's why Congress has put the mandatory minimum in  
20 place.

21 But this case is exacerbated by the fact that, we'll  
22 call it -- I'll use the term, I don't like using it, but it  
23 is a case involving an actual hands-on offense, meaning  
24 actual touching, actual physical activity with the minor  
25 child. And that, again, places the case in a much different

1 category than others.

2 And the abuse -- that's all it is. It's the abuse of  
3 this little girl -- is deeply troubling. It indicates  
4 someone who clearly does have issues, serious issues, which  
5 the defendant acknowledges.

6 And so it's very sad. He was involved with this child  
7 for two years. She obviously had some affinity for him.  
8 And so, very sad.

9 And, unfortunately, the defendant is a threat to minor  
10 children. You don't take pictures of little children. You  
11 don't share them with others on the internet. You don't do  
12 that if you don't have an interest in this type of activity,  
13 or sexual interest in this type of activity.

14 It's like someone -- I've heard the analogy -- someone  
15 who collects baseball cards and baseball autographs and goes  
16 to baseball games and collects uniforms and hats, or  
17 whatever you want to call it, and then say, "Really, I'm not  
18 interested in baseball."

19 Well, you're interested in baseball. Otherwise -- or  
20 you're interested in children. Otherwise you wouldn't be  
21 engaging in this activity and taking these pictures and  
22 sharing them with someone else.

23 That's unfortunate.

24 I'll follow the recommendation of the probation  
25 officer. The guideline -- and she and I have discussed it.

1 Again, these cases are so difficult. The guidelines is 360  
2 months. That is what technically is what the guidelines  
3 will be.

4 The defendant, at least in some respects, deserves  
5 some consideration. I think that sentence would be  
6 excessive or greater than is necessary in this instance,  
7 perhaps, given his young age at 26. 30 years would place  
8 him -- at that point he would be 56, of course less time,  
9 credit for time served and less good time, credit for good  
10 time, as we call it, and things of that nature.

11 So I will do the following:

12 Pursuant to the Sentencing Reform Act of 1984, 18  
13 United States Code 3553(a), it will be the judgment of the  
14 Court that the defendant, Eric Beard, is hereby committed to  
15 the custody of the Bureau of Prisons to be imprisoned for a  
16 term of 240 months. And the Government may very well appeal  
17 that sentence. That's 20 years, but that's well below the  
18 guidelines.

19 I varied downward based upon the age of the defendant.  
20 Also based upon the fact that -- again, I don't know that he  
21 was completely honest and candid. He did make some efforts,  
22 however, make statements to law enforcement, what have you.

23 And, again, that sentence in and of itself may be one  
24 the Government wishes to appeal, and I would understand  
25 that, just based on the conduct.



1           The defendant will be placed on supervised release for  
2 a term of life. I believe that term is necessary to protect  
3 the public, given his admitted problems and issues. He's  
4 cried out for treatment.

5           A term of life supervised release will ensure that if  
6 indeed he does have any other -- is tempted or does engage  
7 in any other conduct of this type, that he will once again  
8 face another heavy sanction. Hopefully he will learn that.

9           And, again, that is an extensive period of time,  
10 greater than ten years, certainly, again, but I believe,  
11 based upon the conduct, the hands-on conduct here, that type  
12 of supervised release is indeed necessary to ensure the  
13 defendant does not commit any type of offense that's similar  
14 to this.

15           When you're released from prison, you'll be, as I've  
16 indicated, placed on supervised release for the time I've  
17 outlined. You'll be required to report in person to the  
18 district in which you're released.

19           I'll waive the fine.

20           Special assessment of \$100 is due immediately.

21           Restitution, do we not have the \$5,000 at issue here?

22           MS. SKUTNIK: There should be a \$5,000 special  
23 assessment, Your Honor.

24           THE COURT: I'm looking for it.

25           MS. SKUTNIK: It does fall within the time frame

1 of the statute.

2 THE COURT: I believe by statute there is a  
3 \$5,000 supervised release based upon the nature of this  
4 offense -- I'm sorry, \$5,000 special assessment the Court  
5 will impose.

6 And the defendant will pay it at no less than 25  
7 percent of his gross monthly income while he's incarcerated.  
8 Hopefully he will have a job and be able to pay restitution.

9 All the mandatory conditions I will put in place, sir,  
10 in the PSI. The standard conditions of probation will be  
11 put in place -- of supervised release, I should say.

12 You'll be required to undergo drug testing, drug  
13 treatment. You have some issues with drugs as reflected in  
14 the PSI.

15 And you will participate in any program of substance  
16 abuse testing, treatment, inpatient, outpatient, as  
17 supervised by your probation officer.

18 You will undergo a mental health evaluation,  
19 participate in a mental health treatment program, follow the  
20 rules and regulations of that program.

21 And your probation officer will supervise you with  
22 regard to that treatment.

23 You must submit your computer, other electronic  
24 communication devices, to a search.

25 There will be no internet access without permission of

1 your probation officer, permission in advance.

2 You'll participate in a sex offense specific  
3 assessment.

4 And you will -- you're required to register with the  
5 Sex Offender Registration and Notification Act under federal  
6 law, comply with the requirements of that act as directed by  
7 your probation officer.

8 And pursuant to the Adam Walsh Child Protection Act,  
9 you'll keep your registration current in each jurisdiction  
10 in which you reside, are employed, or are a student.

11 You must, no later than three business days after each  
12 change in name, residence, or employment or student status  
13 appear in person in at least one jurisdiction in which  
14 you're registered and inform that jurisdiction of any  
15 changes in reporting information.

16 Failure to do so may be a violation of your condition  
17 of release and you may be -- it will be. I'm sorry. It  
18 should be or may be a new federal offense punishable by up  
19 to ten years. So that registration is extremely important.

20 You cannot communicate or otherwise interact with the  
21 victim in this case, Jaylyn, either directly or through  
22 someone else, in any way, shape, or form. And that begins  
23 now.

24 You're going off to the Bureau of Prisons, and I  
25 expect that there is not going to be any contact between

1       you.

2               Hopefully the mother of Jaylyn understands that.  
3       She's in the courtroom. I can't prohibit her from  
4       contacting you, but if in fact there is any such contact  
5       that involves that child in any way, shape, or form, rest  
6       assured there will be a consequence.

7               Do you understand that?

8               THE DEFENDANT: Yes, Your Honor.

9               THE COURT: The harm done to this victim, I've  
10       already said it, and I've said it, and it's obvious. And so  
11       you should not in no way, shape, or form. No apologies.  
12       Nothing.

13              That child should go on. Hopefully she'll get  
14       counseling and hopefully she will go on with her life.  
15       Hopefully she will not know or learn about this. But I  
16       can't control that.

17              You will participate in a sex offense specific  
18       treatment program. You'll follow the rules and regulations  
19       of that program.

20              Your probation officer will help you  
21       participate -- supervise your participation.

22              And you may not seek, obtain, maintain any residence,  
23       employment, volunteer work, church, recreational activities  
24       involving minors, persons under the age of 18, in any way  
25       without the express written approval of your probation

1 officer.

2 Those things will go into your written order. And I  
3 know you'll be serving a lengthy sentence, but you'll be  
4 reminded of those things at a point in time when you are  
5 approaching your release.

6 Under *U.S. versus Bostic*, any objections?

7 I'll note the government's objections to the Court's  
8 sentence. I have varied down substantially. So the  
9 government certainly has a right to appeal. I would  
10 understand if they do. I'll note their objection for the  
11 record.

12 Any other objections, though, as to arguments, counsel  
13 for the Government?

14 MS. SKUTNIK: Nothing further, Your Honor.

15 THE COURT: Thank you.

16 Mr. Jack, under *Bostic*?

17 MR. JACK: None relating to *Bostic*.

18 Judge, would you recommend Milan, Michigan? I'm not  
19 sure he qualifies for that facility, but.

20 THE COURT: I'll make that recommendation, but  
21 again, I think -- he will not qualify for treatment until  
22 later on during his incarceration, the way the BOP works.  
23 But I'll make the recommendation for him.

24 Mr. Beard, I will give you your appellate rights, but  
25 as I will tell you now, I varied substantially. There is

1 more likely no basis for an appeal from the Court's  
2 sentence. But that's a matter you can take up with Mr.  
3 Jack. You may have a constitutional argument you might wish  
4 to make or some other argument.

5 Any notice of appeal must be filed no later than 14  
6 days after I issue an order setting forth your sentence in  
7 the matter.

8 And Mr. Jack will represent you for that appeal if  
9 need be. I'll appoint him for that purpose if you and he  
10 would like to have an appeal filed.

11 Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Has the BOP provided you with  
14 dentures as of yet?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: I'll order, to the best of my  
17 ability, I'll order that you receive dentures. That's  
18 appropriate. You're 26 years old.

19 And if I have the authority, we will see if we can do  
20 something to help you in that regard.

21 All right. Anything else?

22 Thank you very much. That will be the Court's order.

23 MR. JACK: Thank you.

24 MS. SKUTNIK: Thank you, Your Honor.

25 (Proceedings concluded at 12:05 p.m.)

## C E R T I F I C A T E

I certify that the forgoing is a correct transcript from the record of proceedings in the above-entitled matter.

S/Caroline Mahnke 7/7/2020

Caroline Mahnke, RMR, CRR, CRC Date